

BOARD OF OVERSEERS OF THE BAR

Plaintiff

v.

LAWRENCE E. MERRILL

Defendant

DECISION AND ORDER

In an Information filed by the Board of Overseers of the Bar against Lawrence E. Merrill pursuant to M. Bar R. 7.2(b)(1)–(2), the Board charges violations of: M. Bar R. 3.1(a), 3.2(f)(3)–(4), 3.7(b), 3.7(e)(1)(i);¹ and (former)

1. 3.1 Scope and Effect

(a) This Code shall be binding upon attorneys as provided in Rule 1(a). Violation of these rules shall be deemed to constitute conduct “unworthy of an attorney” for purposes of 4 M.R.S.A. § 851 and Rule 7(e)(6)(A). Nothing in this Code is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation; and the prohibition of certain conduct in this Code is not to be interpreted as an approval of conduct not specifically mentioned.

3.2 Admission, Disclosure and Misconduct

(f) **Other Misconduct.** A lawyer shall not:

(3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) engage in conduct that is prejudicial to the administration of justice

3.7 Conduct During Litigation

(b) **Improper Concealment, Statement or Evidence.** A lawyer shall not knowingly make a false statement, conceal information legally required to be revealed, or participate in

Bar Rule 3.6(d).² Bar Counsel J. Scott Davis represented the Board. Merrill appeared *pro se*.

The Board asserts that on or about March 26, 1992, Merrill and Chase Third Century Leasing Co. ("Chase Leasing") settled a dispute between them whereby Merrill agreed to pay Chase Leasing \$4,750 and the parties agreed to execute mutual releases. S. Carter Friend, Esq., attorney for Chase Leasing, prepared the settlement documents which were forwarded to Merrill's then counsel, Thatcher Adams, Esq. Merrill then directly communicated with Friend and returned to him signed copies of documents purporting to be documents that Friend had prepared, together with a check in the amount of \$4,750 drawn on his personal account after borrowing an equal amount from Chase Manhattan Bank ("Chase Bank") by

the creation or preservation of false evidence.

...

(e) Adversary conduct.

...

(1) In appearing in a professional capacity before a tribunal, a lawyer shall:

(i) Employ, for the purpose of maintaining the causes confided to the lawyer, such means only as are consistent with truth, and shall not seek to mislead the judge, jury, or tribunal by any artifice or false statement of fact or law;

...

2. 3.6 Conduct During Representation

...

(d) Threatening Prosecution. A lawyer shall not present, or threaten to present, criminal, administrative, or disciplinary charges solely to obtain an advantage in a civil matter.

...

drawing against an existing line of credit. In actuality, Merrill artfully had changed critical language in the settlement documents.

Merrill then threatened to report Friend to the District Attorney and Bar Counsel, and threatened to sue Chase Leasing when the altered release signed by Chase Leasing was not promptly returned to him.

Merrill subsequently defaulted on his obligations to Chase Bank and sought to use the altered settlement agreement as a defense against the claim of Chase Bank then in the amount of approximately \$23,000. In a subsequent action that Chase Bank brought against Merrill, the Superior Court granted a summary judgment in favor of the Bank on counts of that action involving fraud and unjust enrichment. Before the court entered final judgment (in the amount of approximately \$110,000, including interest and attorney fees), Merrill filed a petition under Chapter 7 of the Bankruptcy Act and, although the automatic stay provisions of the Act were applicable, Merrill failed to notify the court prior to its entry of final judgment. The validity of the Superior Court judgment was contested in the Bankruptcy Court.

Thereafter, Chase Bank and Merrill reached a settlement, but only after Chase Bank brought a petition in the Bankruptcy Court to deny Merrill a discharge pursuant to 11 U.S.C. §§ 727(a)(2)(B) and (a)(4)(A) and to except Merrill's debt to Chase from any discharge that may be granted to him pursuant to 11 U.S.C. §§ 523(a)(2)(A) and (a)(6). Pursuant to the settlement agreement, Merrill paid \$50,000 to Chase Bank in satisfaction of Merrill's obligations under the Superior Court judgment and Chase reserved

its right to file a claim against the bankrupt estate for the balance Merrill owed to it.

Merrill, in his communication with the Grievance Panel, implied that he had satisfied his obligations to Chase in full.

Conclusions

The court concludes that Merrill: (1) violated M. Bar R. 3.2(f)(3) and (4) by surreptitiously amending settlement documents presented to him for signature; (2) violated M. Bar R. 3.6 by threatening S. Carter Friend, Esq. and Friend's client; and (3) violated M. Bar R. 3.7(b) and (e) by his actions before the Grievance Panel and before the Superior Court.

The Bar Rules "are intended to provide appropriate standards for attorneys with respect to their practice of the profession of law, including, but not limited to, their relationship with their clients, the general public, other members of the legal profession, the courts and other agencies of this state." (emphasis added). M. Bar R. 2. "The purpose of such proceedings is not punishment but protection of the public and the courts from attorneys who by their conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties." (emphasis added). *Id.* Violations of the Bar Rules are "deemed to constitute conduct 'unworthy of an attorney'" M. Bar R. 3.1. Merrill's conduct, in the words of the Superior Court Justice before whom the action Chase Bank brought against Merrill was tried, constituted "a specific[,] integrated[,] coordinated scheme of fraud."

When Merrill was admitted to practice in this state, he took the

lawyer's oath set forth in section 806 of Title 4 of the Maine Revised Statutes Annotated. By his actions which led to this proceeding, Merrill has violated virtually all of the undertakings in that oath and has demonstrated by his actions that he lacks the good moral character and fitness to practice law required of a member of the Bar of this state. He suggests a reprimand would be sufficient. The court concludes, however, that a mere reprimand is insufficient due to the gravity of Merrill's offenses. Merrill has shown himself to be a danger to the public and other members of the Bar and has abused and burdened the limited resources of our courts. The calculated manner in which Merrill orchestrated and executed his scheme is conduct unworthy of a member of the Bar of this state. By his actions, Merrill sought to deceive Chase Leasing, Chase Bank, their counsel, a Justice of the Superior Court, Bar Counsel, a Panel of the Grievance Commission, the Board of Overseers, and this court. Under these circumstances, a reprimand is insufficient. The court must impose a sanction which not only will impress upon Merrill the gravity of his actions, but will serve as a warning to other members of the Bar that the court will not tolerate such flagrant violations of the Bar Rules.

Sanctions

The court has considered all of the evidence before it, including Merrill's statements of apology to the Superior Court, and concludes that the appropriate sanction is the suspension of Lawrence E. Merrill from the practice of law in the State of Maine for a period of six months.

Accordingly, it is ORDERED:

Lawrence E. Merrill is suspended from the practice of law in the State of Maine for a period of six months effective thirty days from the date of this Order.

It is further ORDERED:

Lawrence E. Merrill shall comply with the notification requirement of M. Bar R. 7.3(i)(1) within thirty days from the date of this Order and within such period of time shall pay to the Board of Overseers of the Bar the sum of \$548.82 representing the actual costs to the Board of the investigation and prosecution of this Information, which the court finds to be a reasonable amount for such costs.

It is further ORDERED:

Lawrence E. Merrill shall comply with M. Bar R. 7.3(j) as a condition for his reinstatement to the practice of law in the State of Maine.

DATED: February 1, 1999



Paul L. Rudman
Associate Justice

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SUPREME JUDICIAL COURT